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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/652,431	08/31/2000	Roland M. Morley	INTL-0455-US (P9809)	3795

7590 03/23/2005

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EXAMINER

JELINEK, BRIAN J

ART UNIT	PAPER NUMBER
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2615

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/652,431

Applicant(s)

MORLEY, ROLAND M.

Examiner

Brian Jelinek

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) a set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
The arguments are not persuasive, please see the attached Advisory Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Response to Amendment

The Examiner respectfully submits a response to the after final amendment received on 2/25/2005 of application no. 09/652,431 filed on 8/31/2000 in which claims 1-8, 10-18, and 20-23 are currently pending.

Arguments

The Applicant's arguments have been fully considered but they are not persuasive. Please refer to the following office action, which clearly sets forth the reasons for non-persuasiveness.

The Applicant argues "a first optical system and a second optical system"; and "since the optical systems are separately made and called out, they cannot be the same optical system." As set forth in the previous Office Action (103 rejection of claim 1), Labaziewicz clearly discloses a first optical system (Fig. 2, elements 23, 9, X, Y, and Z) and a second optical system (Fig. 2, elements 23, 11, and Z); furthermore, it is clear that the first and second optical systems are different because the first optical system comprises lens 9, whereas the second optical system comprises lens 11.

The Applicant further argues "a first optical path and a second optical path different from the first optical path". Again, as set forth in the previous Office Action (103 rejection of claim 1), Labaziewicz clearly discloses a first optical path (Fig. 2, X, Y, and Z) a second optical path different from the first optical path (Fig. 2, Z) because it is obvious that the second optical path does not include segments X and Y of the first optical path.

The Examiner agrees with the Applicant that the beam splitter, as claimed, must "receive light from two different optical paths and pass that light onto the eyepiece".

The Examiner understands the Applicant's invention, and notes that Fig. 1 of the Applicant's specification shows a beam-splitter 18 that accepts light from a first optical path N and a second optical path W, wherein the light from the first optical path is incident on a first surface of the beam splitter and the light from the second optical path is incident on a second surface of the beam splitter, the second surface being different from the first surface. The Examiner concedes this is clearly distinguishable from the beam splitter of Abe, which only discloses light incident on a first surface of the beam splitter 20 and does not disclose light incident on a second surface of the beam splitter.


However, the combination of Labaziewicz and Abe still read on the claim. In particular, Labaziewicz discloses a first optical system to selectively provide an image on a first optical path (Labaziewicz: Fig. 2, elements 23, 9, X, Y, and Z) and a second optical system to selectively provide an image on a second optical path different from said first optical path (Labaziewicz: Fig. 2, elements 23, 11, and Z), wherein the objective lens system of Labaziewicz multiplexes the first optical path and the different second optical paths onto a single common output (Fig. 2, Z). Furthermore, Abe discloses an objective lens system 10 comprises a single output incident on a first surface of a beam splitter 20. In the combination of Labaziewicz and Abe, the objective lens system of Labaziewicz (Fig. 2) provides the optical input onto the first surface of Abe's beam splitter. Since Labaziewicz multiplexes the first optical path and the different second optical path onto the single common output, and this single common

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output is the optical input onto the first surface of Abe's beam splitter, it is clear that light from both Labaziewicz's first optical path and different second optical path will be incident on the first surface of Abe's beam splitter. Furthermore, since light incident on the first surface of Abe's beam splitter is provided to both an imaging surface and an eyepiece, it is clear that light from both Labaziewicz's first optical path and different second optical path incident on the first surface of Abe's beam splitter would be provided to an imaging surface and an eyepiece. In summary, it is clear that in the combination of Labaziewicz and Abe, the beam splitter of Abe would receive light from one of two selected paths and pass that light onto an imaging array and eyepiece and as a result, meets the limitation of the claim.

Conclusion

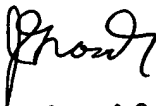
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Jelinek whose telephone number is (571) 272-7366. The examiner can normally be reached on M-F 8:00 am - 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Groody can be reached at (571) 272-7950. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


James J. Groody
Supervisory Patent Examiner
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Brian Jelinek
3/11/2005


James J. Groody
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